

FIRST FINANCIAL BANKSHARES

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Doe
(D. P. Romani)

F. Scott Dueser
President and
Chief Executive Officer

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October 12, 2005

Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Mr. John F. Carter
Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square
Suite 2300
San Francisco, California 94105

CASE
NAME _____

☐ BHC: _____
☐ INST: _____
☐ NON-BK: _____
☐ PCA/CA: _____
☐ FO: _____
☐ W/O-RM: _____
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Re: Wal-Mart Bank Application

Dear Chairman Powell and Mr. Carter:

I am writing to comment on the application of Wal-Mart Stores, Inc. ("Wal-Mart") to establish an industrial bank and obtain federal deposit insurance.

I am very concerned about the ramifications of a Wal-Mart bank and the breach of the wall separating banking and commerce such a bank charter would represent. As the largest commercial company in the world, Wal-Mart, given a bank charter, could have a dramatic negative impact on the banking system and those it serves. We therefore urge the Federal Deposit Insurance Corporation to deny Wal-Mart's application.

At the outset, I want to emphasize that while Wal-Mart claims that it will use its industrial bank charter to process credit card, debit card, and electronic check transactions from its stores, it has not denied that it will pursue retail banking in the future. Indeed, Wal-Mart's application indicates that it plans to offer certificates of deposit to certain organizations immediately, which is evidence that it is indeed interested in offering retail banking services to the public in the future.

Moreover, Wal-Mart's past unsuccessful attempts to enter the retail banking business on a full-scale basis – through a proposed acquisition of an Oklahoma savings and loan company in 1999, a proposed partnership with Canadian Toronto-Dominion Bank in 2001 and a proposed acquisition of a California industrial bank in 2002 – show that the current application is about more than just internal processing. (Importantly, the application submitted in connection with the Canadian Toronto-Dominion Bank proposal was explicit in stating that Wal-Mart planned to offer banking in its retail stores.) Wal-Mart's prior bank applications, and its past aggressive moves into almost all retail lines of business (e.g., pharmacy, gas, groceries), should leave little doubt

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that once it gets its foot in the door, it will seek to provide banking services in as many of its stores as possible.

Mixing of Banking and Commerce

Wal-Mart seeks to exploit a loophole in the Bank Holding Company Act that undermines an important principle in our current banking system: the prohibition on the mixing of banking and commerce. This long-standing principle was reaffirmed recently with the enactment of the Gramm-Leach-Bliley Act ("GLBA") of 1999, which, among other things, shut down the ability of commercial firms to own thrifts. Any decision to reverse the GLBA-mandated separation of banking and commerce should be a Congressional decision, NOT a regulatory decision. Decisions to reverse policies of the Congress should only be made by the Congress.

The general prohibition of the mixing of banking and commerce is there for good reason: to prevent conflicts of interest. And there could not possibly be a more potent conflict of interest than the one that will exist with a Wal-Mart bank.

Wal-Mart is well known for entering a community, driving out the local competition by engaging in what many describe as predatory pricing (only to raise prices once competitors are forced to close) and becoming the new "shopping district" for the community, providing virtually all of the retail products and services in the community (e.g., groceries, pharmacy, hardware, vision care, tire and lube services, clothing, restaurant). There is no reason to expect Wal-Mart to approach retail banking any differently than all of its other lines of business. Wal-Mart will establish banking offices in its stores and cause competitive problems for local banks the same way it has for local retailers. Because of these competitive pressures, many local banks may have to shut down or reallocate resources elsewhere, leaving Wal-Mart as the only bank in town. Small businesses in the community would be forced to seek banking services from their biggest competitor, Wal-Mart. Therein lies the conflict.

A Wal-Mart bank would likely not want to lend to a competing business in the community, nor would it want to provide financing to a start-up business that would compete against Wal-Mart. And any such competing businesses would be loathe to share their business plans with a Wal-Mart bank in connection with an application for credit. Because of its commercial business activities (which other banks do not and cannot engage in), Wal-Mart would not be able to make impartial credit decisions based on the creditworthiness of borrowers, but rather would be influenced by business considerations relating to its retail stores. We contend that this kind of conflict is precisely why the general prohibition on the mixing of banking and commerce exists. The dangers of allowing Wal-Mart to subvert this prohibition are particularly acute given its tremendous size.

Competitive Unfairness

If Wal-Mart is allowed to exploit the Bank Holding Company Act loophole and is granted an industrial bank charter, it will have a huge competitive advantage over other banks. This is the case because banks cannot generally engage in commercial activities. They cannot acquire a department store or other non-financial retail outlet. The GLBA precludes it.

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Why should the largest and most powerful company in the world be granted the privilege of doing what local banks cannot? Why should Wal-Mart have the ability to put bank offices in its retail store throughout the country while local banks that must compete with a Wal-Mart bank have no ability to combine banking with a non-financial retail business? I simply believe it would be fundamentally unfair to allow Wal-Mart to establish a nationwide bank when banks have no authority to get into Wal-Mart's business.

Moreover, Wal-Mart would not be subject to the same supervisory requirements as banks. Wal-Mart, as the ultimate parent company of its bank, would not be subject to the Federal Reserve's regulatory and supervisory requirements that apply to other bank holding companies. Again, this is because of the loophole in the Bank Holding Company Act that exempts commercial firms that own industrial banks from the Act's requirements. Not only does this raise safety and soundness concerns, it also leaves banks at a competitive disadvantage, since regulatory burdens and costs to which they are subject would not apply to Wal-Mart.

Safety and Soundness

If the Wal-Mart application is approved, it would be allowed to operate a bank without umbrella supervision by the Federal Reserve. This raises serious safety and soundness concerns.

The Federal Reserve has stated that consolidated supervision is essential in order to provide protection to insured banks that are part of a larger organization and to the federal safety net. Problems in a parent of a bank can quickly spread to the bank, and therefore allowing a company that owns a bank to operate outside the supervisory framework established by Congress poses substantial risks. This is particularly true in Wal-Mart's case since again, it is the largest company in the world and would expose the bank to the risk associated with its commercial enterprises. The absence of a supervisory framework for Wal-Mart puts the Bank Insurance Fund, the banks that support it and indeed taxpayers at unjustifiable risk.

Conclusion

As stated above, Wal-Mart's bank proposal would pose unacceptable risk to the banking system and its regulatory safety net; result in hugely unfair competition to existing banks, likely driving some of them out of business; and create unacceptable conflicts of interest. Wal-Mart's bank proposal simply is not in the best interests of consumers, small businesses, their communities, and our banking system. Moreover, approval of the application would usurp the Congressionally mandated separation between banking and commerce. I therefore urge the Federal Deposit Insurance Corporation to deny Wal-Mart's application.

Sincerely,



F. Scott Dueser
President and CEO

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